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20 **UNITED STATES DISTRICT COURT**

21 **CENTRAL DISTRICT OF CALIFORNIA**

22 In re BANC OF CALIFORNIA  
23 SECURITIES LITIGATION,

24 This Document Relates to:

25 ALL ACTIONS.

CASE NO.: 8:17-cv-00118-DMG (DFMx)

CLASS ACTION

**DEFENDANT STEVEN A. SUGARMAN'S  
REPLY IN SUPPORT OF HIS  
OBJECTION TO MUDDY WATERS  
CAPITAL LLC'S INTENTION TO  
DISCONTINUE SEEKING A  
MONETARY AWARD AGAINST  
LATHAM & WATKINS LLP**

Judge: Hon. Dolly M. Gee  
Crtrm: 8C

1 Latham & Watkins LLP's ("Latham") and Muddy Waters Capital LLC's  
2 ("Muddy Waters") have attempted to weaponize a clandestine, undisclosed, collusive  
3 settlement ("Collusive Settlement") to subvert this Court's unambiguous September  
4 30, 2024 Order.<sup>1</sup> After the Court found Latham and Steven Sugarman jointly and  
5 severally liable for Muddy Waters' purported attorneys' fees [Dkt. # 654, page 14],  
6 Latham and Muddy Waters now seek to rewrite history — and this Court's ruling — by  
7 seeking that any sanctions award apply solely to Mr. Sugarman. Muddy Waters'  
8 request to pursue the entirety of its outrageous and wholly unjustified demand of  
9 \$1,159,751.77<sup>2</sup> (which is the amount that it initially sought for fees allegedly incurred  
10 due to *both* Latham and Mr. Sugarman), while shielding Latham from liability and any  
11 contribution to Mr. Sugarman, reeks of strategic bad faith and gamesmanship. It is an  
12 impermissible end-run around this Court's binding judicial findings and a transparent  
13 effort to manipulate this Court into rubber-stamping a wholly unjustified and  
14 inequitable outcome. Such gamesmanship deserves not indulgence, but swift and  
15 unambiguous rejection.

16 As expounded upon in detail below, Muddy Waters has no legal or factual basis  
17 for this requested relief. As such, this Court should disregard the Notice and  
18 Responses filed by Muddy Waters and Latham because: (1) Muddy Waters' requested  
19 relief is an improper motion for reconsideration designed to impermissibly modify and  
20 direct this Court how to impose its September 30, 2024 Order in which the Court  
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22  
23 <sup>1</sup> Defendant Steven A. Sugarman ("Mr. Sugarman") files this Reply in Support of His  
24 Objection to the Notice of Muddy Waters Capital LLC's Intention to Discontinue  
25 Seeking a Monetary Award Against Latham & Watkins (the "Notice") [Dkt. 669] and  
26 (the "Objection") [Dkt. #670]. In so doing, Mr. Sugarman collectively responds to  
27 Latham and Muddy Waters' Responses to the Objection [Dkt. #673 and 675].

28 <sup>2</sup> Mr. Sugarman maintains that the vast majority of fees sought by Muddy Waters are  
unrelated to the "reasonable fees and costs incurred to investigate and litigate the  
motion for contempt" awarded in the Court's September 30<sup>th</sup> Order. As explained  
more fully in Mr. Sugarman's November 4, 2024 Response to Declarations in Support  
of Request by Muddy Waters Capital LLC to Set Amount of Attorneys' Fees [Dkt.  
#658], which is incorporated herein by reference, Muddy Waters' fee award, if any,  
should not exceed \$110,391.94.

1 already found that both Latham and Mr. Sugarman were *jointly and severally liable*  
2 for the fees Muddy Waters incurred to investigate and file its contempt motion, and (2)  
3 there is no legal or factual basis to support a sanctions award solely against Mr.  
4 Sugarman.

5 All that is left for the Court to do is to determine the amount, if any, of the  
6 sanctions award against both Latham and Mr. Sugarman for the fees Muddy Waters  
7 incurred in bringing the Motion, which the Court has already held are subject to joint  
8 and several liability. Whether Muddy Waters chooses to enforce and execute upon  
9 that award against Latham is up to Muddy Waters and potentially governed by the  
10 terms of their Collusive Settlement, but that is not a basis for the Court to *change* its  
11 prior order.  
12

13 **A. Muddy Waters' Request is a Disguised Motion for Reconsideration as it**  
14 **Seeks to Improperly Modify the Court's September 30, 2024 Order.**

15 As set forth in Mr. Sugarman's Objection, neither Muddy Waters nor Latham  
16 have the authority to modify the Court's September 30, 2024 Order mandating that  
17 "Latham and Sugarman are *jointly and severally liable*" for payment of the sanctions  
18 the Court imposed. [Dkt. #654, page 14] (emphasis added). While Muddy Waters now  
19 claims that it "has specifically **not** asked for this Court to modify its contempt order"  
20 and Latham similarly asserts that it "does not seek to undo or to otherwise modify the  
21 Court's contempt order," these statements fall flat in light of the relief sought because  
22 that is precisely what Muddy Waters is asking this Court to do. [Dkt. #675 at page 5;  
23 Dkt. #673 at page 1]. Indeed, Muddy Waters acknowledges that what has "changed is  
24 the scope<sup>3</sup> of Muddy Waters' request for relief" which now includes a request that the  
25 Court "not enter any order fixing any amount of contempt sanctions against Latham"  
26 and instead "enter an order fixing the amount of monetary contempt sanctions *against*

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27  
28 <sup>3</sup> In its original Motion and Proposed Order, Muddy Waters requested that fees and  
costs be issued against "Latham and Sugarman [as they] are jointly and severally liable  
for all such fees and costs." [Dkt. # 655-27].

1 *Sugarman.*” [Dkt. #669 at page 2 and #675 at page 6] (emphasis added). By seeking a  
2 subsequent order fixing monetary sanctions only against Mr. Sugarman, Muddy Waters  
3 is necessarily asking the Court to modify its September 30, 2024 Order, ignore its  
4 findings related to Latham’s “serious violation of the Protective Order,” and nullify its  
5 prior imposition of joint and several liability for the sanctions.

6 Not only does Muddy Waters not have the authority to decide what civil  
7 contempt sanctions are appropriate, but its requested relief constitutes a disguised  
8 motion for reconsideration. *See Armstrong v. Brown*, 939 F. Supp. 2d 1012, 1018  
9 (N.D. Cal. 2013) (“Civil sanctions are appropriate, at the court's discretion, to  
10 encourage Defendants to comply with its order”); *Bailey v. Superior Ct. In & For*  
11 *Shasta Cnty.*, 142 Cal. App. 2d 47, 54 (1956) (“The enforcement of an order of  
12 contempt in this state is not for the vindication of a private right but is for the  
13 maintenance of the dignity and authority of the court, and to preserve the peace and  
14 dignity of the people of the State of California.”). Indeed, Muddy Waters has failed to  
15 establish any of the requirements for a motion for reconsideration. *See County of Santa*  
16 *Clara v. Trump*, 267 F.Supp.3d 1201, 1207 (N.D. Cal. 2017) (“Reconsideration is  
17 appropriate ‘if the district court (1) is presented with newly discovered evidence, (2)  
18 committed clear error or the initial decision was manifestly unjust, or (3) there is an  
19 intervening change in controlling law.”) (quoting *Sch. Dist. No. 1J, Multnomah Cnty.,*  
20 *Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)); *see also* L.R. 7-18 (“...any  
21 motion for reconsideration must be filed no later than 14 days after entry of the Order  
22 that is the subject of the motion or application”). Thus, Muddy Waters’ request to  
23 modify the September 30, 2024 Order must be denied.

24 **B. Even if Muddy Waters Could Modify the September 30, 2024 Order**  
25 **(Which It Cannot), There is No Legal or Factual Basis Allowing A**  
26 **Sanctions Award Solely Against Mr. Sugarman.**

27 Muddy Waters and Latham’s Collusive Settlement cannot form the basis for the  
28 Court to disregard joint and several liability. Imposing a sanctions award solely

1 against Mr. Sugarman would not only run squarely counter to the plain language of  
2 the Court’s September 30, 2024 Order—it would effectively redefine the meaning of  
3 “joint and several” liability. The factual record makes clear that liability must remain  
4 joint and several as between Latham and Mr. Sugarman, as Muddy Waters’ claimed  
5 damages cannot be separated or apportioned based on each party’s individual conduct.  
6 As such, the Court must issue an Order consistent with its September 30, 2024 Order  
7 that Latham and Mr. Sugarman are jointly and severally liable.

8 Pursuant to Cal. Civ. Proc. Code § 877 and 877.6, joint tortfeasors and co-  
9 obligors are each responsible for payment of the damages award. In fact, to limit the  
10 obligation to solely non-settling co-obligors or joint tortfeasors, that party must seek  
11 court approval. Pursuant to Cal. Civ. Proc. Code § 877.6, “[a] determination by the  
12 court that the settlement was made in good faith shall bar any other joint tortfeasors or  
13 co-obligor from any further claims against the settling tortfeasor or co-obligor for  
14 equitable comparative contribution, or partial or comparative indemnity, based on  
15 comparative negligence or comparative fault.” *Id.* Latham and Muddy Waters cannot  
16 seek to weaponize the Collusive Settlement to impose judgment solely against Mr.  
17 Sugarman, particularly when the Court has found the parties jointly and severally  
18 liable.

19 Muddy Waters relies on *FDIC v. Ching* to support its overly broad argument that  
20 “Sugarman and Latham are not joint tortfeasors,” and thus, the Collusive Settlement  
21 does not reduce Mr. Sugarman’s liability. [Dkt. 675 at page 3]; 189 F. Supp. 3d 978,  
22 996 (E.D. Cal. 2016). However, Muddy Waters analysis is incomplete and inaccurate,  
23 as the *Ching* Court explains that, in analyzing whether parties are “joint tortfeasors,”  
24 the Court determines whether there was “one indivisible injury caused by two or more  
25 parties.” *Id.*; *May v. Miller*, 228 Cal. App. 3d 404, 409 (Cal. Ct. App. 1991). To that  
26 end, nowhere in the *Ching* opinion does the Court make the sweeping holding that two  
27 parties must be joint tortfeasors before the settlement by one impacts the remaining  
28

1 monetary liability of the other. *Id.* In fact, the *Ching* Court explicitly acknowledges  
2 other doctrines and theories that could result in an offset despite ultimately rejecting  
3 their application to the circumstances that were presented in that case. Cal. Civ. Proc.  
4 Code § 877; *see e.g. id.* at 998 (“The equitable doctrines of double recovery, offset,  
5 and unjust enrichment do not apply *to these payments*...The directors have not  
6 produced evidence...as required before the doctrine against double recovery may  
7 apply... the evidence presented would not allow a trier of fact to find that the directors  
8 and the FDIC share a mutual debt or have a claim “enforceable in its own right. Offset  
9 cannot apply.”) (emphasis added).

10 Here, Muddy Waters cannot avoid this Court’s finding of joint and several  
11 liability and seek to prohibit Mr. Sugarman from his right to contribution against  
12 Latham. Such finding runs contrary to the Court’s prior September 30, 2024 Order and  
13 is unsupported by any law. Simply because Muddy Waters alleges the conduct and  
14 levels of culpability are different, does not mean that Latham and Mr. Sugarman are  
15 not co-obligors and/or joint tortfeasors due to the finding of joint and several liability.  
16 In fact, Muddy Waters’ alleged damages (*i.e.*, its fees in bringing the Motion) relates to  
17 the conduct of both Latham and Mr. Sugarman. Muddy Waters has given this Court no  
18 way to segregate or separate those fees; rather, it wants the Court to now hold Mr.  
19 Sugarman liable and responsible for 100% of the fees incurred – including fees directly  
20 attributable to Latham’s conduct. As such, Muddy Waters has no legal or factual basis  
21 for its request to solely issue a judgement against Mr. Sugarman.

22 Further, Mr. Sugarman is entitled to an offset as a co-obligor and/or joint  
23 tortfeasor of a mutual debt, pursuant to Cal. Civ. Proc. Code § 877 and 877.6, to  
24 prevent him from suffering a manifest injustice by being forced to fund an  
25 impermissible double recovery for Muddy Waters. *See Bravo v. City of Santa Maria*,  
26 810 F.3d 659, 668 (9th Cir. 2016) (when a “settlement with one defendant covers the  
27 very same costs a plaintiff is trying to recover from the non-settling defendant, the  
28 plaintiff cannot recover the same costs twice.”). At least some portion of the



1 \$1,153,673.93 that Muddy Waters alleged constitutes their “reasonable attorney’s fees  
2 and costs” incurred “to investigate and litigate the motion for contempt” has been paid  
3 by Latham and it would be an abuse of discretion for the Court to not take that  
4 payment into account when fixing the amount of Mr. Sugarman’s sanctions. *Bravo*,  
5 810 F.3d at 668 (“A district court abuses its discretion when it refuses to offset an  
6 award of attorney fees by a settling defendant’s payment of those same fees.”); *see also*  
7 *Corder v. Brown*, 25 F.3d 833, 840 (9th Cir. 1994) (“We hold here that a non-settling  
8 defendant is entitled to offset attorney’s fees owed by the amount already paid by  
9 settling defendants...If an offset is denied, the plaintiff’s attorney may receive a  
10 windfall. A windfall would be manifestly unreasonable.”).

11 Indeed, if Muddy Waters’ revised request is granted, the record will contain  
12 conflicting orders on the same issue — one holding Latham jointly and severally liable  
13 for any amount of sanctions imposed and one assigning all monetary liability to Mr.  
14 Sugarman — undoubtedly frustrating Mr. Sugarman’s future appellate and contribution  
15 rights. While Muddy Waters can ultimately choose whether or not to pursue additional  
16 payment from Latham, Muddy Waters’ attempt to alter the scope of relief that the  
17 Court has already granted by requesting a subsequent contradictory order is both  
18 procedurally improper and patently unfair.

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**CONCLUSION AND PRAYER**

For these reasons, Defendant Steven A. Sugarman respectfully requests that the Court deny Muddy Waters' request for an order fixing the amount of monetary contempt sanctions against solely Mr. Sugarman. Mr. Sugarman further requests that any subsequent order relating to the matters set forth herein continue to find Latham and Mr. Sugarman jointly and severally liable for any monetary sanctions imposed pursuant to the Court's September 30, 2024 Order, and that Latham and Muddy Waters be required to disclose the terms of their alleged Collusive Settlement to allow the Court to apply the appropriate offset before entering any sanctions award.

**MICHELMAN & ROBINSON, LLP**

Dated: July 18, 2025

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